

Town Commercial Relations Committee

3.30.09 – Minutes

Pole Room, Bangs Community Center

Attendees – Mark Parent (chair), Barry Roberts, Jeff Krauth, Jeff Blaustain, Leigh Dunlap, Leslie Ariola, Michael Jacques, Yuri Friman, Nina Wishengrad, Tony Maroulis, Stephanie O’Keeffe (Select Board Liaison), Jonathan Tucker (Staff Liaison)

1. Announcements and Minutes

- Mr. Parent introduced Michael Jacques to the TCRC. Mr. Jacques is part owner of X-9 games in Hampshire Mall, Hadley. Amherst resident.

2. Julie Marcus – New England Environmental

Ms. Marcus had requested a chance to present to the TCRC; she explained her current predicament as it relates to the Buildings Department and Inspector

NEE profile:

- 2 lots, plans to build a second building on Research Drive
- wanted to offer space to a doctor’s office
- NEE is a full-service environmental consulting firm
- 23 years in business; 21 in Amherst
- 18 full time employees, with 16 based in town
- strong local presence, interested in the town
- their bank did not want them to build in Amherst
- town amended zoning law through town meeting to accommodate their business
- bank okayed project based on town zoning amendment
- 10,000 square foot building; 39,000 volts of photovoltaics
- needed the second lot for sunlight purposes
- they report a good experience with fire, conservation and planning
- 1 hearing through buildings; well-supported by town
- spending money on local contractors - \$4 million project
- using only ½ of building A for NEE; other ½ for offices – potentially a physician
- Not zoned PRP
- Example of PRP use is Valley Medical
- Lost interested local doctor as building inspector ruled that doctors were not professionals
- Decision by building inspector took 5 weeks
- Litigation would expose issues with other businesses
- Town Manager, Planning Director, and Selectman Hayden were conferred with on the issue – NEE would require a change in zoning, but use is acceptable
- Only Building Inspector can speak on this issue with the ZBA, and BI ruled against NEE’s request
- Impact on town
 - appeal can be expensive for both town and business
 - other businesses might be exposed to scrutiny
 - would expose unequal zoning enforcement
 - Town Manager cannot question Building Inspector decisions
 - Lot is on the market for \$325,000
 - Loss of business for doctor
 - Loss of ~\$25,000 in permitting fees for the town
 - Shortage of primary care physicians in the area
- Mr. Tucker noted that zoning issues are a result of 1960s expansion of UMass and town has not adequately streamlined zoning issues
- PRP as currently written is crafted for small town uses – architect, lawyer – low visitation levels, low traffic – semi-sporadic
- Medical offices have constant visitation; need to amend bylaw to allow for a more modest sized office to keep level of visitation low

- The town council supported Building Inspector's understanding of precedent
- BI's view is an interpretive issue

Mr. Parent asked the committee if we should bring an amendment to the PRP bylaw to the ZBA – should we note that there is a major flaw in the interpretation of the zoning bylaw and endorse a change in the zoning law?

Mr. Roberts noted that NEE might bring case law to ZBA and that TCRC recommendation may complicate NEE case. We should not jeopardize their position.

Mr. Parent called for a motion to support NEE's appeal of the Building Commission ruling to the ZBA. Seconded by Mr. Maroulis.

VOTED Unanimously to support NEE's appeal

- Mr. Krauth noted that when there is a gray area that the greater good should be observed; culture of the town should be to move forward when it can.
- Mr. Maroulis suggested that an op-ed from TCRC on issues related to zoning and building inspection, though not necessarily specific to NEE's case, be considered

Mr. Tucker noted that there is \$50,000 in the FY10 budget for the town to create a streamlined zoning and planning code to update outdated regulations. There has been no update to the code since 1974. The language is no longer useful.

3. Observer's Reports

Mr. Parent noted that the Farmer's Market went before the DRB for permanent signage on the Common. Farmer's market did not make large inroads. At some point, it may be appropriate to weigh in on the signage issue. He asked the TCRC to pay attention to their request.

4. Master Plan review

No major changes. Some minor suggestions re: price per square foot were suggested.

5. Papa Gino's special permits

- Papa Gino's has been open for two weeks
- Went before the ZBA on their request for 2 am closing time, ZBA also took up the issue of their sign
- They applied as "Food/Retail" – come in and leave "use by right/ sight plan was waived."
- Simultaneously asked for approval to be a sit down establishment with a 2 am closing; request to ZBA also covered their signs
- ZBA received the presentation, did not like their signs; preferred wood signs
- Their awning can't be lit; it would be too active
- Noted that PeoplesBank does not have wooden signs; Via Via and Amherst Martial Arts do have wooden signs on the same building
- Papa Gino's staff asked that a railing on the North end of the porch be removed so as not to impede emergency access; suggested that they might be able to use a temporary saw horse to keep access open.
- ZBA chair told Papa Gino's that they should stay out of the deliberation and overruled their request
- Mr. Tucker's staff is finalizing the ZBA's recommendations now; if recs follow ZBA's recollection of events, then ZBA will sign without again meeting on it
- ZBA is a three member body – their votes must be unanimous
- Had ZBA followed DBA's recommendations on the sign, this issue would be over. A discontinuity is noted.
- Mr. Maroulis noted that PapaGino's GM came to him at the Chamber of Commerce on this issue and that he had informed the Town Manager of the complaints.

Meetings will be moved to the last Thursday of the month. Next meeting is Thursday, April 30. Mr. Parent will be unable to attend. Mr. Roberts will guest chair.